

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHAEL RODIO,

Plaintiff,

v.

R.J. REYNOLDS TOBACCO COMPANY,

Defendant.

Civil Action No. 04-CV-10006-JGD

MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION
TO STRIKE PORTIONS OF PLAINTIFF'S SUMMARY JUDGMENT OPPOSITION

Defendant R. J. Reynolds Tobacco Company ("Reynolds") moves to strike certain portions of the Plaintiff's Memorandum in Opposition to the Defendant's Motion for Summary Judgment; specifically, (1) the entire section entitled "Decision of the Mass. [sic] Department of Labor and Work Force Development, Division of Employment and Training," pp. 14-17 (hereinafter referred to as "the Unemployment Section"; and (2) Exhibit G.

The Unemployment Section contains discussion of evidence that was presented at Rodio's unemployment hearing. Exhibit G is an excerpt of the testimony at that hearing. This evidence is clearly confidential and is protected by an absolute privilege. See G.L. c. 151A §46, which states as follows:

(a) Except as provided in this section, information secured pursuant to this chapter is confidential and for the exclusive use and information of the department in the discharge of its duties. Such information is not a public record nor admissible in any action or proceeding, except as provided in this section. This information is absolutely privileged and shall not be made the subject matter or basis in any action of slander, libel or emotional distress.

Subsection (b) sets forth a number of exceptions, none of which apply in this case. See also *Tuper v. North Adams Ambulance Service, Inc.*, 428 Mass. 132, 137, 697 N.E.2d 983, 986-87 (1998) (affirming trial court's decision to exclude evidence of unemployment proceedings): "General laws c. 151A, §46, provides that, with certain exceptions not relevant here, information secured pursuant to this chapter is confidential, is for the exclusive use and information of the department in the discharge of its duties, is not a public record, and may not be used in any action or proceeding." Disclosure in violation of the statute is a misdemeanor. G. L. c. 151A, §46(e).

Notwithstanding the confidential nature of unemployment proceedings, Reynolds does not object to admission of the unemployment transcript, provided that the Court considers the entire transcript rather than the selective portions that Rodio quotes and attaches. If the Court is inclined to admit evidence of the unemployment hearing, Reynolds respectfully requests that it be notified and allowed to submit the entire transcript – or, if the Court prefers, relevant excerpts.

For the reasons stated above, Defendant R. J. Reynolds Tobacco Company respectfully requests that its Motion to Strike Portions of Plaintiff's Summary Judgment Opposition be granted.

Respectfully submitted,

R.J. REYNOLDS TOBACCO COMPANY

By its attorneys,

/s/ Mark H. Burak

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Dated: September 29, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each party by first class mail on September 29, 2005

/s/ Mark H. Burak